

FEB 16 2000

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JERRY KAME,

Plaintiff - Appellant,

v.

ROBERT PERRY, Secretary of
Corrections, New Mexico Department
of Corrections; JOHN SHANKS,
Director of Adult Prisons, New
Mexico Department of Corrections;
JEFF SERNA, Interstate Compact
Administrator, New Mexico
Department of Corrections; and TIM
LEMASTER, Warden, New Mexico
State Penitentiary,

Defendants - Appellees.

No. 99-2275

(D.C. No. CIV-99-778-JP)

(D. New Mex.)

ORDER AND JUDGMENT*

Before **TACHA, McKAY**, and **MURPHY**, Circuit Judges.

After examining Appellant's brief and the appellate record, this panel has
determined unanimously that oral argument would not materially assist the

*This order and judgment is not binding precedent, except under the
doctrines of law of the case, res judicata, and collateral estoppel. The court
generally disfavors the citation of orders and judgments; nevertheless, an order
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a pro se civil rights appeal. Plaintiff was transferred from a New Mexico prison facility to one in Rhode Island. His complaint alleged a variety of abuses committed or encouraged by Rhode Island prison officials. These claims all relate to prison conditions in Rhode Island. He seeks damages and injunctive relief from the defendants in this action, all of whom are New Mexico prison officials. His theory is that they are liable because they transferred him to Rhode Island and refused to return him to New Mexico or remediate his problems after being notified of their existence.

The trial court dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim against the New Mexico defendants. We have reviewed the complaint, its attachments, the trial court's *sua sponte* order of dismissal, and the brief on appeal. We conclude that the trial court's order correctly characterized the plaintiff's allegations and correctly dismissed plaintiff's complaint. We therefore affirm for the reasons given by the trial court and dismiss plaintiff's appeal as frivolous.¹

¹We are dismissing as frivolous the appeal of an action the district court dismissed under 28 U.S.C. § 1915(e)(2)(B). For purposes of § 1915(g), both dismissals count as strikes against plaintiff. See Jennings v. Natrona County Detention Ctr., 175 F.3d 775, 780 (10th Cir. 1999).

AFFIRMED and DISMISSED.

Entered for the Court

Monroe G. McKay
United States Circuit Judge